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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-893]

Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results and Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On May 20, 2014, the United States Court of International Trade (“CIT”) sustained the Department of Commerce’s (“the Department”) final results of redetermination pursuant to remand of the 2009-2010 antidumping duty administrative review of certain frozen warmwater shrimp from the People’s Republic of China (“Remand Redetermination”).¹ Consistent with the decision of the United States Court of Appeals for the Federal Circuit (“CAFC”) in Timken Co. v. United States, 893 F.2d 337 (Fed. Cir. 1990) (“Timken”), as clarified by Diamond Sawblades Mfrs. Coalition v. United States, 626 F.3d 1374 (CAFC 2010) (“Diamond Sawblades”), the Department is notifying the public that the final judgment in this case is not in harmony with the Department’s final results and is amending the final results of the administrative review of certain frozen warmwater shrimp from the People’s Republic of China (“PRC”) with respect to the margin assigned to Hilltop International (“Hilltop”) covering the period of review (“POR”) February 1, 2009, through January 31, 2010.²

EFFECTIVE DATE: May 30, 2014.

¹ See Final Results Of Redetermination Pursuant To Court Remand issued by the Department of Commerce (November 7, 2013), available at <http://enforcement.trade.gov/remands/>.

² See Administrative Review of Certain Frozen Warmwater Shrimp From the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 51940 (August 19, 2011) (“Final Results”).

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-2593.

SUPPLEMENTARY INFORMATION: On November 30, 2012, the CIT remanded this case to the Department for reconsideration of the Department's selection of the primary surrogate country.³ On January 9, 2013, based on a request from the Department, the CIT determined to "permit the agency to consider new evidence concerning the question of whether Hilltop International provided false or incomplete information regarding its affiliates in the course of the fifth administrative review ('AR5') of this antidumping duty ('AD') order."⁴ Pursuant to the Expanded Remand Order, we reconsidered our determination in this review and found that Hilltop provided false and incomplete information regarding its affiliates and that none of its submissions could be relied upon.⁵ Accordingly, we found that Hilltop failed to rebut the presumption that it is part of the PRC-wide entity and applied total adverse facts available ("AFA") to the PRC-wide entity, which includes Hilltop.⁶ As AFA, we applied a dumping margin of 112.81 percent, which is the highest rate from any segment of the proceeding and the current PRC-wide rate.⁷ On July 23, 2013, the CIT sustained our Remand I with respect the determination that Hilltop failed to demonstrate its eligibility for a separate rate and to apply AFA to the PRC-wide entity.⁸ However, the CIT remanded this case to the Department to reexamine and corroborate the 112.81 percent PRC-wide rate or choose a different countrywide

³ See Ad Hoc Shrimp Trade Action Committee v. United States, Court No. 11-00335, Slip Op. 12-145 (CIT November 30, 2012).

⁴ See Ad Hoc Shrimp Trade Action Committee v. United States, Court No. 11-00335, Slip Op. 13-4 (CIT January 9, 2013) ("Expanded Remand Order").

⁵ See Final Results Of Redetermination Pursuant To Court Remand issued by the Department of Commerce (April 1, 2013), available at <http://enforcement.trade.gov/remands/> ("Remand I").

⁶ Id.

⁷ Id.

⁸ See Ad Hoc Shrimp Trade Action Committee v. United States, Court No. 11-00335, Slip Op. 13-93 (CIT July 23, 2013)

rate that better reflects commercial reality.⁹ Pursuant to the Remand Order II, we reevaluated the rate applied as total AFA to the PRC-wide entity and found that it continues to be reliable and have probative value.¹⁰ The CIT sustained the Department's Remand Redetermination on May 20, 2014, making the effective date of this notice May 30, 2014.¹¹

Timken Notice

In its decision in Timken, 893 F.2d at 341, as clarified by Diamond Sawblades, the CAFC held that, pursuant to section 516A(e) Tariff Act of 1930, as amended ("the Act"), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's May 20, 2014, judgment sustaining the Department's Remand Redetermination with respect to Hilltop constitutes a final decision of that court that is not in harmony with the Department's Final Results. This notice is published in fulfillment of the publication requirements of Timken. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or if appealed, pending a final and conclusive court decision. The cash deposit rate will remain the rate established for the most recent period during which the PRC-wide entity was reviewed.¹²

Amended Final Results

Because there is now a final court decision, we are amending the Final Results with respect to Hilltop's margin for the period February 1, 2009, through January 31, 2010. The revised weighted-average dumping margin is as follows:

⁹ See Ad Hoc Shrimp Trade Action Committee v. United States, Court No. 11-00335, Slip Op. 13-93 (CIT July 23, 2013) ("Remand Order II")

¹⁰ See Remand Redetermination.

¹¹ See Ad Hoc Shrimp Trade Action Committee, Court Nos. 10-00275 and 11-00335, Slip Op. 14-55 (CIT May 20, 2014).

¹² See Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results of Administrative Review; 2011–2012, 78 FR 56209 (September 12, 2013).

Exporter	Percent Margin
PRC-Wide Entity ¹³	112.81

In the event the CIT's ruling is not appealed, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries during the POR of the subject merchandise exported by Hilltop using the revised assessment rate calculated by the Department in the Remand Redetermination.

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: May 29, 2014.

Paul Piquado,
Assistant Secretary
for Enforcement and Compliance.

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¹³ The PRC-wide entity includes Hilltop International.